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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 428

SUNBEAM CORPORATION,

Petitioner,

vs.

SUNBEAM LIGHTING CO., A CO-PARTNERSHIP CONSISTING OF MARCUS BODIAN, HERBERT L. KRIEGER AND PHIL R. FRIEDMAN,

Respondents.

PETITIONER'S REPLY TO RESPONDENTS' BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI.

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THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Certain statements and misstatements in Respondents' Brief Opposing Petition for Writ of Certiorari necessitate the following reply:

1. Respondents' Statement That the Illustration at the Bottom of Page Five of the Petition is Not a Complete Label of the Respondents is False.

Respondents state, at page 4, that they do not use the name SUNBEAM alone, or as a trade mark. The contrary is demonstrated by Petitioner's Exhibit No. 42, reproduced at the bottom of page 5 of its Petition. Respondents state,

however, that this exhibit is only part of a label, the remainder of which is respondents' Exhibit GG (R. 945). The falsity of this statement is revealed by the testimony of respondent Friedman, who identified (R. 462) this "remainder" as a shipping or address label, separately attached to respondents' carton. It was not shown that the two labels often, or ever, appear on the same side of the carton so as to be visible at the same time. Moreover, a cursory glance at the label (R. 945), which respondents claim is the remaining part of the label reproduced at the bottom of page 5 by petitioner, suffices to establish that it is neither a "remainder" nor any other part of that label, but is, instead, separate and complete in itself.

2. Respondents' Statement That Petitioner Has Not Proved Confusion in Respondents' Own Market is False.

Respondents repeatedly state that none of petitioner's witnesses would ever be likely to be in the market for respondents' goods (pp. 5, 9, 10). The statement ignores the clear testimony of the witnesses George Hatton, a restaurateur (R. 351-352), and Mack B. Jones, an electrical lighting contractor (R. 197-199), *that they bought respondents' fixtures because they believed they came from petitioner.* As to others of petitioner's witnesses, who were confused, it is not necessary that they be directly within respondents' market. It is enough that, like petitioner's witnesses Myrabelle Sherman (R. 316), Robert G. Wesley (R. 319-320) and Catherine Larson (R. 312), they be in *petitioner's* market, and also have encountered, used or serviced respondents' fixtures, believing that they originated with petitioner.

3. The Respondents' Statement That the Court of Appeals Did Not Reverse the Judgment as to Small Lamps is False.

Respondents contend (p. 10) that the Court of Appeals did not reverse that portion of the District Court's judgment which enjoined the manufacture and sale of small lamps bearing the trade-mark SUNBEAM, and that such portion of the judgment is not involved herein. The contrary, however, is clear from the final amended Judgment of the Court of Appeals (R. 967).

Petitioner prays, therefore, that a writ of certiorari issue to the Court of Appeals of the Ninth Circuit to review its reversal of the trial court's judgment as to respondents' usage of SUNBEAM, not only in connection with its fluorescent lighting installations, but also in connection with small, portable lamps.

Respectfully submitted,

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